

1 A. Oh, I've had Evinrudes. And the most  
2 recent one was a Yamaha. But, those were  
3 small boats. I don't have big outboard  
4 motors.

5 Q. And would you do the work on the engine  
6 yourself?

7 A. Absolutely.

8 Q. And that's okay? It's reasonable to do  
9 your own work if you know what you're  
10 doing?

11 A. That's my background, engineering. I'm a  
12 fiddler.

13 Q. You're not a navigational expert, I  
14 trust?

15 A. Well, let's broaden what you mean by  
16 navigation. When I was in the Navy I was  
17 a qualified deck watch officer. So, I  
18 have a navigational background on  
19 vessels. I've owned vessels. And I say,  
20 "vessels," -- sailboats, power boats.

21 Q. I guess I've owned them too. I wouldn't  
22 testify in court as an expert at that, so  
23 I'm just trying to --

24 A. No, I realize that, "*Shoemaker, stick to*

1                   *your last.*" If a navigational expert  
2                  were required, I think I would suggest to  
3                  Mr. Rosenthal that he hire someone who is  
4                  a navigational expert.

5                  Q.     okay.

6                  A.     I don't think navigation by itself is  
7                  involved in this case.

8                  Q.     Okay, I'm just -- what about operation of  
9                  outboards? And I understand you've done  
10                 it with your own.

11                 A.     Yes.

12                 Q.     But, if this was a case limited to the  
13                 operation of an outboard, would you give  
14                 Mr. Rosenthal similar advice?

15                 A.     I think you have to get down to case by  
16                 case. He has his expert. Mr. Ramsey has  
17                 done far more operation of an outboard  
18                 than I have.

19                 Q.     Okay, so you don't intend to testify in  
20                 this case as an operational expert?

21                 A.     Only to the extent that this little  
22                 horsepower, or smaller horsepower, is not  
23                 suitable for a vessel of this size, under  
24                 those current conditions.

1 Q. So, based on those equations --

2 A. If you call that --

3 Q. No, to me, that's naval architect --

4 A. Well, that's basically navigation.

5 Maneuvering of vessels, that's naval  
6 architecture. Operation of vessels; I'm  
7 an operator, but don't ask me to testify.  
8 I'm not the one who does the operation of  
9 a vessel for a living.

10 Q. Okay, so as far as the operation, the  
11 maintenance, and the repair of the motor,  
12 you've got familiarity with that, but --

13 A. Well, maintenance, perhaps.

14 Q. How so?

15 A. Well, you have to follow some maintenance  
16 guides in order to keep your engine in  
17 proper operating order. And if it's not  
18 done, something goes awry.

19 Q. But, let me just stop you there. Your  
20 expertises in naval architect don't  
21 really -- all of us who drive cars  
22 understand that you have to maintain  
23 equipment.

24 A. Yeah, I'm sure. I think that what I'm

1 saying is -- I wouldn't say common  
2 knowledge, but most people recognize it.  
3 The Judge would recognize that. He  
4 doesn't need --

5 Q. And the jury?

6 A. Probably the jury, too. They don't need  
7 someone to tell them that you have to  
8 maintain your vessel, or maintain your  
9 engine. When it's not operating, you  
10 take it to the service station.

11 And in this particular case, it  
12 was not operating for some period of  
13 time, perhaps a month before, and no one  
14 took it to the service station.

15 Q. Okay, but that doesn't particularly get  
16 into the naval architecture realm, does  
17 it?

18 A. No, no.

19 Q. You're saying that based on your owning  
20 boats and that sort of thing?

21 A. Yeah, and I think it's universal  
22 knowledge. Mechanical things, when they  
23 don't operate, you fix them. Or when  
24 they don't operate satisfactorily, you

1 fix them. When they stall out all the  
2 time, you have them fixed.

3 Q. Have you removed anything from your file?

4 A. No.

5 Q. I notice there's no billing information,  
6 or there's only one.

7 A. I haven't billed them.

8 Q. It's time.

9 A. Yeah, well, Katrina came up to stop a lot  
10 of things in this world.

11 Q. I understand. And the rates that you're  
12 billing them? Is that an hourly rate as  
13 reflected in the appendix?

14 A. Correct. I wouldn't have my billing  
15 information in here, anyway. That's  
16 separate. This is the job file, not the  
17 billing file.

18 Q. And what about other correspondence with  
19 the firm?

20 A. There is none. You have everything here.

21 Q. Well, was there a letter retaining you?

22 A. No, no letter retaining me.

23 Q. All done over the phone?

24 A. All done over the phone.

1 Q. okay.

2 A. I still work on a handshake.

3 Q. So, they've told you what the case is  
4 about, I trust, as well?

5 A. They told me what the case is all about.

6 MR. MURPHY: Okay, I guess that's  
7 a wrap.

8 MR. ROSENTHAL: I just have a  
9 couple of followup questions.

10  
11 EXAMINATION BY MR. ROSENTHAL:

12 Q. Is it your opinion that the undersized  
13 engine caused and contributed to Mr.  
14 Ramsey's accident?

15 A. Yes, it's a contributing factor.

16 Q. And can you explain your opinion?

17 A. Yes. If, for example, he had something  
18 that was able to operate under the swift  
19 current, and once the engine was  
20 operating, he would have been able to get  
21 away from underneath the stern of the  
22 dredge. He would have been able to back  
23 away and then go forward and get out. As  
24 long as the engine was still going and

not stalled.

Since it contributes, how much it contributes, I don't know.

Q. Is it your opinion that Mr. Ramsey in any way caused his accident?

A. No, he --

MR. MURPHY: I'm just going to object.

A. I think he was a victim being in a vessel that stalled out, and the swift current grabbed him and put him in the wrong place.

Q. Now, is it your opinion that the engine was not properly maintained?

A. Yes.

MR. MURPHY: Objection.

A. As soon as it came back and someone found out that it was stalling out, they should have sent it back and said, "*Fix it.*" And Hochstrasser would have said, "Well, *I told you what to do. You had to change this, this, and this. And if you'd done that and we tested it again we'd find out what was wrong with it and we'd send you*

1           *back a vessel that we would give our  
2           90-day, or six-month, or a year warranty  
3           on it."*

4       Q. And what is that opinion on the  
5           maintenance of the engine?

6       A. Well, it stalled out. And then we go  
7           back to Hochstrasser's invoice that says  
8           that we recommended that you do this,  
9           this, and this, and you didn't do it.

10           And I think, really, what that's  
11           all about is Hochstrasser saying, "*Look,  
12           if you have problems, don't come back to  
13           me. I'm not going to warrant your  
14           vessel, that is, your engine suitable for  
15           your vessel, because you didn't do what  
16           I'm suggesting.*"

17       Q. Like a cover your ass sort of a --

18       A. I think so.

19       Q. Mr. Murphy was asking you questions about  
20           your experience in the area of vessel  
21           maintenance. What is your experience in  
22           that area?

23       A. Well, I'm not a fellow who works in a  
24           repair shop. And if something is wrong,

1 I tell someone, "*Go out and see your*  
2 *repairman, he'll take care of it for*  
3 *you.*"

4 Q. Can you repair your own vessel, your own  
5 engine?

6 A. Sure, an outboard I can.

7 Q. Okay, so you have experience repairing  
8 your own outboard engine?

9 A. Yes, but all of a sudden you get into  
10 large engines, and they become a little  
11 bit more complicated because they're now  
12 all electronically fired, all  
13 electronically controlled. And similar  
14 to trying to repair your own automobile  
15 engine any longer, unless you know the,  
16 quote, codes, to get in and provide  
17 diagnostic information, you have a rough  
18 time of doing repairs on modern engines.

19 Q. Okay, this engine was a 40 horsepower  
20 engine. Would you consider that to be a  
21 large engine?

22 A. No.

23 Q. Is that the sort of engine that you had  
24 worked on previously?

1 A. Oh, yeah, surely.

2 Q. So, you've had experience working on 40  
3 horsepower engines?

4 A. Sure.

5 Q. Are the engines that you have at your  
6 home 40 horsepower?

7 A. No, I've gotten rid of all those.

8 Q. Why would that be?

9 A. I have a different kind of vessel. I  
10 have one, a 19 foot sailboat that has  
11 like a 5 horsepower engine. And then I'm  
12 part owner of a 40 foot sailboat that has  
13 like a 90 horsepower, -- I guess maybe  
14 it's not 90 -- a 60 horsepower inboard  
15 diesel engine.

16 Q. Now, Mr. Ramsey testified in his  
17 deposition about -- you read Mr. Ramsey's  
18 deposition, right?

19 A. Correct.

20 Q. He testified that he was backing the  
21 vessel -- and when I say, "*the vessel*,"  
22 -- he was backing the skiff out after he  
23 drifted to the dredge. And he was  
24 backing it out and he says, "*The engine*

1           *revved up like I had just thrown it in*  
2           *neutral, but I didn't. It was still in*  
3           *reverse. But, it was running and the*  
4           *propeller wasn't going."*

5                 what do you think could have  
6                 caused that?

7             A. It either got thrown in neutral or some  
8                 keyweigh broke. And when I say,  
9                 "*keyweigh*," if we go back to  
10                 Hochstrasser, you'll see that -- when I  
11                 say, "*keyweigh*," a key broke. In their  
12                 April 4<sup>th</sup>, -- I'm sorry, April 6<sup>th</sup> invoice  
13                 -- or repair order; I shouldn't say,  
14                 "*invoice*," -- they talk about replacing  
15                 keyweigh key.

16                 And that indicates a key broke.  
17                 I don't know where this key is. But,  
18                 something broke, and that would possibly  
19                 keep the propeller from turning.

20             Q. What could cause a key to break?

21             A. Some large forces that can develop on a  
22                 shaft. For example, if the propeller hit  
23                 the cable, the wire, the mooring wire, it  
24                 could break a key.

1 Q. And could an undersize engine cause a  
2 vessel to strike a mooring line?

3 A. Only to the extent that the operator  
4 would not be able to maneuver away from  
5 the mooring line.

6 Q. So it affects the operation of the  
7 vessel?

8 A. Oh, yes. You can't turn. You can't  
9 speed. You can't accelerate as quickly.  
10 You can't maneuver as quickly with an  
11 underpowered vessel, a small horsepower  
12 vessel.

13 MR. ROSENTHAL: That's all I  
14 have.

15 MR. MURPHY: I'll just follow up  
16 on that, briefly.

17  
18 EXAMINATION BY MR. MURPHY:

19 Q. We talked before about some expert  
20 testimony you've given, either in  
21 depositions or in court. Have you ever  
22 testified as an expert, either in  
23 deposition, or in court, regarding the  
24 operation of an outboard motor?

1 A. I'm just thinking about the ones that  
2 have been collision cases, and the ones  
3 that have to do with people being thrown  
4 out of the vessel, thrown out of the high  
5 speed -- to that extent, yes.

6 Q. Okay, but aside from that, no?

7 A. Basically, maneuvering comes down to high  
8 speed maneuvering where people are thrown  
9 out and that's the casualty, someone's  
10 hurt, not just someone -- yes, some other  
11 cases.

12 You're all familiar with this  
13 little inboard-powered personal  
14 watercraft. You sit on these things and  
15 go fast.

16 Q. Uh-huh.

17 A. And if you don't steer, or you take your  
18 foot off the pedal, there's no power to  
19 them, they keep going in the same  
20 direction. And all of a sudden you have  
21 some serious accidents with them. And  
22 that's maneuvering, or trying to  
23 maneuver, with lack of power, and lack of  
24 power because you took your foot off the

1           gas, and the impeller is no longer  
2           turning. You don't have the pump  
3           squirting out water. And you're trying  
4           to maneuver and it doesn't maneuver.

5       Q. Right, but with regard to outboard  
6           motors?

7       A. I just can't imagine, or can't think  
8           right now where that particular situation  
9           has come up.

10      Q. And your testimony with these collisions  
11           would be as a naval architect, --

12      A. Yes.

13      Q. -- based on what?

14      A. Maneuvering characteristics of vessels.  
15           And that's those little personal  
16           watercraft, how they maneuver.

17      Q. So, it's fair to say that you've never  
18           testified in court or at deposition  
19           regarding maintenance of outboard motors?  
20           You're not an outboard maintenance --

21      A. I understand you.

22      Q. -- expert, are you?

23      A. I don't think it's ever come up.

24      Q. Okay, and what about the repair --

1 A. I'm talking about coming up in a  
2 deposition or trial testimony.

3 Q. So, it's fair to say you've never  
4 testified in that capacity before?

5 A. I don't believe so as in someone involved  
6 with maintenance.

7 Q. And it's also fair to say you don't  
8 consider yourself an expert, if the issue  
9 is strictly limited to maintenance of  
10 outboard motors?

11 A. Depends upon -- remember, my background  
12 is design of things, engines. Not  
13 outboards, but real engines that run  
14 large ships.

15 Q. Right.

16 A. And from that standpoint, I get involved  
17 a little bit with maintenance, but very  
18 little. I'm more in design than  
19 maintenance.

20 Q. And as far as the repair of outboard  
21 motors, you've said you never worked in  
22 that capacity, but you've never testified  
23 in --

24 A. Well, I --

1 Q. Let me just finish the question, please.

2 You've never testified in court or at  
3 deposition as to repair of outboard  
4 motors, have you?

5 A. No, but my background is -- remember, I  
6 worked many years with U.S. Salvage  
7 Association, which is the technical arm  
8 for the marine underwriters, where I'd go  
9 out and see damages to vessels, and write  
10 repair specifications to see that they  
11 got back in good order.

12 However, at that time, I was not  
13 involved, specifically, with outboards.  
14 If they'd get dunked, submerged, I'd take  
15 them to the shop and have them do them  
16 over.

17 But, on large engines, you don't  
18 take the engine out and send it to the  
19 shop to do over. You'd repair as  
20 necessary. You look at the bearings.  
21 You look at the fuel injectors. You look  
22 at the starters, that is, the air  
23 starters, or electrical starters, and  
24 determine each particular item that needs

1 repair on large engines. Compared with  
2 these engines, the engine, you know, a  
3 couple of thousand dollars, and you  
4 either can buy a new one or have it  
5 repaired for something less than that.

6 Large engines, we're talking  
7 about hundreds of thousands of dollars.

8 Q. And how long ago did you do that for the  
9 Salvage Association?

10 A. I worked for the U.S. Salvage Association  
11 from 1958 to 1965; seven years.

12 Q. And you mentioned you've owned some  
13 outboard motors. Have you ever owned one  
14 as big as 40 horsepowers?

15 A. Not specifically 40, something less than  
16 that.

17 Q. How much less?

18 A. Oh, 25.

19 Q. And when did you last own --

20 A. Oh, that goes back many years ago; 20  
21 years ago, 30 years ago, that size.

22 Basically, I went into sailboats that had  
23 much smaller engines than that.

24 Q. Okay, so basically you haven't repaired

1           or maintained an outboard motor over 20  
2           horsepower in 20 years, anyway?

3       A. That's correct. A little bit more than  
4           20 horsepower, but that's -- probably  
5           closer to 30.

6       Q. Okay. The keyweigh. That's a term that  
7           came up that we hadn't talked about. And  
8           I understand that that's on the repair.  
9           Can you tell us, in a general sense, what  
10          the keyweigh is?

11      A. Yes, it holds something onto a shaft.  
12           When I say, "*something*," it could hold a  
13          propeller onto a shaft. It could hold a  
14          gear onto the shaft.

15      Q. And where's it located on the --

16      A. I don't know. It just says, "*keyweigh*  
17          *key*." I don't know where it is. You'd  
18          have to find out from the engine  
19          manufacturer's part list. They have a  
20          number; you find out where it is on the  
21          engine.

22      Q. And if the keyweigh breaks, can that  
23          cause the motor to stall?

24      A. It could cause it to, possibly, because

1                   we might be talking about a timing gear.

2     Q.    This wouldn't be an electrical problem,  
3                   would it?

4     A.    No, it would not be electrical. This is  
5                   a mechanical problem.

6     Q.    But, it's a mechanical problem?

7     A.    Yeah.

8     Q.    And I think I cut you off. How would  
9                   breaking the keyweigh cause the motor to  
10                  possibly stall?

11    A.    I don't know what keyweigh this is and  
12                  where the key is located and what's  
13                  connected to it for gears, connected to  
14                  it. It might affect the timing of the  
15                  sparkplug, for example.

16    Q.    okay.

17    A.    I just don't know where this is.

18    Q.    I'm just trying to get a general sense.  
19                  And I understand your testimony.

20    A.    I just don't know.

21    Q.    And at least one way for a keyweigh to  
22                  break is the prop striking an object,  
23                  like a mooring wire?

24    A.    Correct.

1 Q. If that's what happened in this case,  
2 hypothetically, that the vessel stalled  
3 because the prop hit the mooring wire,  
4 then the stalling in this case had  
5 nothing to do with the previous  
6 stallings; is that fair to say?

7 A. It may or may not have anything to do  
8 with it.

9 Q. You wouldn't know one way or the other?

10 A. No. The vessel could have hit the wire  
11 because it stalled, or the vessel could  
12 have hit the wire because of lack of  
13 maneuverability caused by the small  
14 engine.

15 Q. Or Mr. Ramsey may have driven it into the  
16 wire.

17 A. Or Mr. Ramsey may have driven it into the  
18 wire.

19 Q. And that could cause the keyweigh to  
20 break.

21 A. It could, and the wire.

22 Q. And that could cause the vessel to stall?

23 A. Could cause the vessel to stall. That  
24 is, the engine to stall.